

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS**

Honolulu, Hawaii

REF:OCCL:DH

CDUP: KA-3460

November 12, 2010

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Time Extension Request for Conservation District Use Permit (CDUP) KA-3460 for Single Family Residence (SFR) Catherine M. Bartmess Trust

APPLICANT: Roy A. Vitousek, Cades Schutte, Kona Office, Hualalai Road, Suite 303, Kailua Kona, Hawaii, 96740

LANDOWNER: Catherine Moragne Bartmess and Russ Bartmess, 356 Meridian, Crystal Lake, Illinois, 60014

LOCATION: Haena District, Island of Kauai

TMK: (4) 5-9-005:027

PARCEL AREA: 2,672 square feet

SUBZONE: Limited

BACKGROUND:

On August 8, 2008, the Board of Land and Natural Resources (BLNR) approved CDUA KA-3460 for the construction Single Family Residence (SFR) Catherine M. Bartmess Trust, Subject Parcel TMK: (4) 5-9-005:027, Haena District, Island of Kauai, and was subject to 23 terms and conditions (**Exhibit 1**). Condition # 5 noted, "any work or construction to be done on the land shall be initiated within one (1) and a half years of the approval of such use, in accordance with construction plans that have been signed by the Department, further, all work and construction must be completed within three (3) and a half years of the approval."

1st TIME EXTENSION REQUEST:

On October 27, 2009, the department granted a one year time extension request; the deadline to initiate construction was February 4, 2011 and the deadline to complete construction was February 4, 2013 (**Exhibit 2**). However, the initial time request was made for a two year time extension to initiate and finish construction, not one year. Counsel for the landowners is now asking (one year later) that the deadline be extended to the originally requested dates to initiate and complete construction.

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA E. THIRLBY
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DH

FILE NO: CDUA KA-3460

Acceptance Date: April 3, 2008
180-Day Exp. Date: September 3, 2008

AUG 13 2008

Ben Welborn
Landmark Consulting Services, Inc.
P.O. Box 915
Hanalei, Hawaii 96714

Dear Mr. Welborn:

SUBJECT: Conservation District Use Application (CDUA) KA-3460 for the Catherine Moragne Bartmess and Russ Bartmess proposed Single Family Residence (SFR), Haena District, Island of Kauai, Subject Parcel TMK: (4) 5-9-005:027

This letter is to inform you that CDUA KA-3460 for the proposed Bartmess Single Family Residence, located in Haena District, Island of Kauai, has been approved by the Board of Land and Natural Resources on August 8, 2008, and was subject to the following terms and conditions:

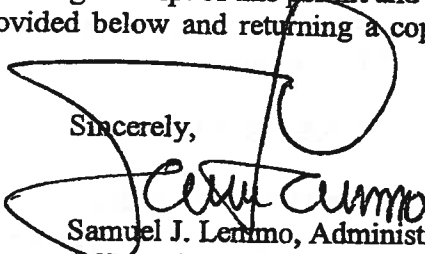
1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the

EXHIBIT 1

16. That the Board approve the request for a five foot Maximum Height Limit variance to meet Federal and County flood regulations, and a five foot variance from the minimum side yard setbacks to accommodate long-term erosion hazards;
17. That the Board of Land and Natural Resources will review the final proposed plans;
18. That the approval of CDUA KA-3460 is subject to full compliance with HRS, Chapter 343;
19. Other terms and conditions as may be prescribed by the Chairperson;
20. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void;
21. Artificial light from exterior lighting fixtures, including, but not necessarily limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes shall be prohibited of the light directly illuminates, or is directed to project across property boundaries toward the shoreline and ocean waters, except as permitted pursuant to Section 205A-71, HRS;
22. That the Single Family Dwelling shall not be used for rentals or any other commercial purposes unless approved by the Board; and
23. That the applicant will follow the Seabird Protection Protocol developed with the US Fish and Wildlife Service and Division of Forestry;

Should you have any questions, please contact Dawn Hegger of the Office of Conservation and Coastal Lands at 587-0380. Please acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the OCCL within thirty (30) days.

Sincerely,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

→ Catherine M. Bartness, trustee

Date: 8-22-08

c: OHA/KDLO
County of Kauai Planning Department
Haena - Hanalei Community Association
Sierra Club Kauai Chapter

Laura H. Thielen, Chairperson
Samuel J. Lemmo, Administrator
September 20, 2010
Page 2

On August 21, 2009, the Bartmesses wrote to the Department of Land and Natural Resources ("Department") requesting an extension of time for Condition 5. There were apparently some discussions between Mr. Bartmess and Dawn Hegger of OCCL and the Bartmesses submitted follow-up requests for extension on August 29, 2009, and September 14, 2009. They requested two-year extensions of the deadlines set by Condition 5 of CDUP KA-3460.

On October 27, 2009, Ms. Thielen wrote to Ms. Bartmess acknowledging receipt of the August 29, 2009 request for extension, granting a two-year extension, and attaching the Bartmesses' September 14, 2009 letter. In the letter of October 27, 2009, Ms. Thielen states:

The Department notes, pursuant to Chapter 13-5, Hawaii Administrative Rules (HAR), Section 13-5-43, TIME EXTENSIONS (b), "time extension may be granted as determined by the Chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant." Therefore, the Department is granting a two (2) year time extension to CDUA KA-3309 (sic). The deadline to initiate construction is now February 4, 2011, and the deadline to complete construction is now February 4, 2013. (Emphasis added.)

Insofar as CDUP KA-3460 (not CDUA KA-3309) was issued on August 8, 2008 to the Bartmesses and Condition 5 states that the work should be initiated in one and a half years and completed in three and a half years, a two-year extension of these deadlines should result in the new deadlines being February 8, 2012 to initiate construction and February 8, 2014 to complete construction. Can you please confirm that the extended deadlines under Condition 5 of CDUP KA-3460 are:

1. Initiate construction by February 8, 2012, and
2. Complete construction by February 8, 2014.

If there is any question or issue on this matter, please contact me at (808) 521-9345. If the Department is not able to confirm that these deadlines have been extended as set out above, please consider this a request to the Board of Land and Natural Resources for an extension of time pursuant to HAR § 13-5-43.